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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 CHRISTOPHER ROSS WESTFALL,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

CASE NO. 3:19-cv-05819-BHS-JRC

ORDER TO SHOW CAUSE OR
AMEND PETITION AND
DENYING MOTION FOR
APPOINTMENT OF COUNSEL

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16 The District Court has referred this matter to United States Magistrate Judge J. Richard
17 Creatura as authorized by 28 U.S.C. § 636(b)(1)(A) and (B) and local Magistrate Judge Rules
18 MJR3 and MJR4. This matter is before the Court on a petition for writ of habeas corpus under
19 28 U.S.C. § 2241. Dkt. 9, at 1.

20 Because petitioner states that he has not filed any motion or otherwise sought state court
21 review of the issues raised in his petition and because his grounds would require this Court to
22 interfere in a pending State criminal proceeding, doctrines of exhaustion and abstention bar the
23 Court from considering petitioner's claims. Petitioner also fails to show that the appointment of
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1 counsel is appropriate at this early stage. Therefore, the Court denies without prejudice
2 petitioner's motion for the appointment of counsel and orders petitioner to adequately address
3 the issues herein or file an amended petition on or before **December 13, 2019**.

4 5 **BACKGROUND**

6 Petitioner, who proceeds *pro se* and is incarcerated at Lewis County Jail, states that he is
7 a pretrial detainee (Dkt. 9, at 1) seeking dismissal of his charges of possession of a stolen vehicle
8 and a controlled substance. Dkt. 1-1, at 7. He also requests the return of seized property. Dkt.
9 1-1, at 7. Petitioner's grounds for relief are "due process" and "incarceration and seizure of
10 property without determining guilt." Dkt 9, at 5.

11 Regarding his pending charges, petitioner states that on March 1, 2019, he was arrested
12 and taken into custody at Lewis County Jail. Dkt. 1-1, at 9. After being "bailed out" on the
13 Lewis County charges and released from Lewis County Jail, petitioner was taken into custody in
14 Thurston County "on a separate matter." Dkt. 1-1, at 9. Petitioner states that although "bail was
15 granted" on the Thurston County charges, he was not released from Thurston County but was
16 transferred back to Lewis County on a failure to appear charge. Dkt. 1-1, at 9. Petitioner alleges
17 that he was not at fault for the alleged failure to appear, as he was "held in the custody of
18 [Thurston County], who was in frequent contact with Lewis County [and] should have been fully
19 aware of the petitioner['s] whereabouts." Dkt. 1-1, at 9. Petitioner also alleges that "the
20 prosecution" falsified reports that petitioner expressed an intent to flee prosecution and/or
21 commit new crimes upon release. Dkt. 1-1, at 9. Further, petitioner states that he is being
22 improperly held without bail. *See* Dkt. 1-1, at 9.

1 Petitioner states that he has not sought any type of review of his claims other than by writ
2 of habeas corpus in this Court. *See* Dkt. 1-1, at 5.

3 4 **DISCUSSION**

5 The matter is now before the Court on preliminary review of the petition to determine
6 whether “it plainly appears from the face of the petition and any attached exhibits that the
7 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254
8 Cases; *see also* 28 U.S.C. § 2243 (Rules Governing Section 2254 cases may also be applied to
9 habeas corpus actions filed under § 2241).

10 11 **I. Failure to Exhaust**

12 “[A] state prisoner must normally exhaust available state judicial remedies before a
13 federal court will entertain his petition for habeas corpus.” *Picard v. Connor*, 404 U.S. 270, 275
14 (1971). Petitioner’s claims will be considered exhausted only after “the state courts [have been
15 afforded] a meaningful opportunity to consider allegations of legal error without interference
16 from the federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986). “[S]tate prisoners
17 must give the state courts one full opportunity to resolve any constitutional issues by invoking
18 one complete round of the State’s established appellate review.” *O’Sullivan v. Boerckel*, 526
19 U.S. 838, 845 (1999).

20 A habeas petition under § 2241 “challenges the execution of a criminal sentence on
21 grounds that a prisoner ‘is in custody in violation of the Constitution or laws or treaties of the
22 United States.’” *Benny v. U.S. Parole Commission*, 295 F.3d 977, 988 (9th Cir. 2002) (quoting
23 28 U.S.C. § 2241(c)(3)). Although 28 U.S.C. § 2241(c)(3) does not mandate an exhaustion
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1 requirement, the Ninth Circuit Court of Appeals has held that exhaustion is necessary as a matter
2 of comity unless special circumstances warrant federal intervention prior to a state criminal trial.
3 *Carden v. Montana*, 626 F.2d 82, 83–84 (9th Cir. 1980).

4 Here, petitioner fails to show that he exhausted state court remedies by presenting federal
5 constitutional or statutory claims to the Washington state trial and appellate courts in the ongoing
6 criminal proceedings against him. Petitioner has also not shown that special circumstances
7 warrant federal intervention in this case. Therefore, petitioner must show cause why this case
8 should not be dismissed for failure to exhaust state remedies.

9 10 **II. *Younger* Abstention**

11 Petitioner’s case may also be inappropriate for review in federal court under the *Younger*
12 *v. Harris* abstention doctrine. *See* 401 U.S. 37 (1971); *see also Dominguez v. Kernan*, 906 F.3d
13 1127, 1131 (9th Cir. 2018). *Younger* abstention bars federal courts from staying or enjoining
14 pending state criminal court proceedings unless there are exceptional circumstances. *Carden*,
15 626 F.2d at 83.

16 *Younger* abstention is appropriate when “(1) there is ‘an ongoing state judicial
17 proceeding’; (2) the proceeding ‘implicate[s] important state interests’; (3) there is ‘an adequate
18 opportunity in the state proceedings to raise constitutional challenges’; and (4) the requested
19 relief ‘seek[s] to enjoin’ or has ‘the practical effect of enjoining’ the ongoing state judicial
20 proceeding.” *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (quoting *ReadyLink*
21 *Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)). Federal courts do
22 not invoke the *Younger* abstention if there is a “showing of bad faith, harassment, or some other
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1 extraordinary circumstance that would make abstention inappropriate.” *Middlesex County Ethics*
2 *Comm’n v. Garden State Bar Ass’n*, 457 U.S. 423, 435 (1982).

3 Here, *Younger* abstention appears to apply. First, petitioner is a pre-trial detainee and is
4 in the midst of ongoing state criminal proceedings. Second, as these proceedings involve a
5 criminal prosecution, they implicate important state interests. See *Kelly v. Robinson*, 479 U.S.
6 36, 49 (1986); *Younger*, 401 U.S. at 43–44. Third, petitioner has failed to allege facts showing
7 that he has been denied an adequate opportunity to address the alleged constitutional violations
8 in the state court proceedings. Fourth, it is unclear if petitioner is raising claims that would
9 effectively enjoin the ongoing state judicial proceeding. It is unclear whether petitioner seeks to
10 bring an excessive bail claim under the Eighth Amendment. See Dkt. 1-1, at 9; see *Arevalo*, 882
11 F.3d at 766 (finding *Younger* abstention not appropriate where the issues raised challenged a bail
12 hearing). However, petitioner’s stated grounds for relief—violation of due process for lack of
13 evidence of guilt before incarcerating him and seizing property—would effectively enjoin the
14 ongoing criminal proceedings against him.

15 Therefore, because it is unclear on the face of the petition whether or not *Younger*
16 abstention may apply to petitioner’s claims, petitioner must show cause why this case should not
17 be dismissed under *Younger*.

18 19 **III. Motion to Appoint Counsel**

20 There is no constitutional right to counsel in a habeas corpus action. *Coleman v.*
21 *Thompson*, 501 U.S. 722, 755 (1991). A habeas petitioner has a right to counsel, as provided by
22 rule, if an evidentiary hearing is required in his case. See Rule 8(c) of the Rules Governing
23 Section 2254 Cases; 28 U.S.C. § 2243. The Court may request an attorney to represent indigent
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1 civil litigants under 28 U.S.C. § 1915(e)(1) but should do so only under “exceptional
2 circumstances.” *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). “A
3 finding of exceptional circumstances requires an evaluation of both the likelihood of success on
4 the merits and the ability of the [petitioner] to articulate his claims *pro se* in light of the
5 complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.
6 1986).

7 At this time, the Court has not ordered service of the petition and has not determined that
8 an evidentiary hearing will be required. *See* Rules Governing Section 2254 Cases in the United
9 States District Courts 6(a) and 8(c); 28 U.S.C. § 2243. Petitioner’s grounds for relief do not
10 appear to be legally complex such that he would be unable to adequately articulate his claims.
11 As petitioner has not shown appointment of counsel is appropriate at this time, the motion to
12 appoint counsel is denied without prejudice.

14 **IV. Motions to Stay and for Expeditious Ruling**

15 Petitioner has filed a motion to stay state court proceedings and a motion for expeditious
16 ruling on his motion to stay. Dkts. 11, 12. As petitioner has not yet filed a serviceable petition
17 and the Court cannot determine whether amendment can cure the petition, petitioner’s motions
18 are premature. The Clerk’s office shall strike the motions from the docket; petitioner may refile
19 these motions if he files an amended pleading that is adequate to survive the Court’s preliminary
20 review.

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1 **CONCLUSION AND DIRECTIONS TO CLERK AND PETITIONER**

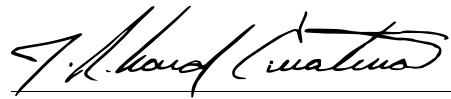
2 If petitioner intends to pursue this § 2241 habeas action, he must file a response to this
3 order and an amended petition on the form provided by the Court. The amended petition must be
4 legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should
5 contain the same case number, and it may not incorporate any part of the original petition by
6 reference. The amended petition will act as a complete substitute for the petition, and not as a
7 supplement.

8 The Court notes that petitioner has two other pending § 2241 petitions in this District, in
9 which he requests dismissal of a variety of charges brought by Thurston County after an arrest on
10 February 20, 2019 (Case No. 3:19-cv-05817-RBL-DWC, Dkt. 1-2) and dismissal of a charge of
11 possession of stolen property brought by Lewis County after an arrest on April 23, 2019 (Case
12 No. 3:19-cv-05818-RBL-TLF, Dkt. 1-1). It is unclear to the Court whether petitioner's
13 arguments in the petition in this matter (Case No. 3:19-cv-05819-BHS-JRC) pertain solely to
14 pending charges under state court cause number 19-1-00165-21 for possession of a stolen vehicle
15 and possession of a controlled substance. It is also unclear to the Court whether petitioner's
16 three § 2241 petition each pertain to the same criminal proceeding. If he chooses to file an
17 amended petition in this matter, petitioner should clarify precisely what criminal charges are
18 pending against him and which charges his petition pertains to.

19 The Court notes that the proper respondent is the person who has custody over petitioner
20 (the official who is in charge of custody concerning pre-trial detainees for the County—that is,
21 the person who is head of the jail where petitioner is detained pending trial). *See* 28 U.S.C. §
22 2242. If petitioner files an amended petition, he must ensure that the petition names the correct
23 respondent.

1 If petitioner fails to adequately address the issues raised herein or file an amended
2 pleading on or before **December 13, 2019**, the undersigned will recommend dismissal of this
3 action. The Clerk is directed to provide petitioner with the forms for filing a petition for habeas
4 corpus relief pursuant to 28 U.S.C. § 2241. Petitioner's motions to stay and for expeditious
5 ruling (Dkts. 11, 12) are stricken from the docket with leave to refile and petitioner's motion for
6 counsel (Dkt. 10) is denied without prejudice.

7 Dated this 18th day of November, 2019.

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9 J. Richard Creatura
10 United States Magistrate Judge
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